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October 6, 2015

Running Grass
Environmental Justice Coordinator
U.S. Environmental Protection Agency
1200 Sixth Avenue (CRE-164)
Seattle, WA 98101

RE: Native Village of Tyonek, Proposed Chuitna Coal Mine,
U.S. Army Corps of Engineers

Dear Mr. Running Grass:

The Native American Rights Fund (NARF) is working with the Native Village of Tyonek, Alaska, in an attempt to ensure that the Village's environmental and cultural concerns are properly addressed by the U.S. Army Corps of Engineers (USACE) in its review of the potential environmental impacts of the proposed Chuitna coal mine. The Chuitna coal mine project proposed by PacRim Coal would allow mining directly through 13.8 miles of salmon spawning and rearing habitat, completely removing the streambed from the headwaters, bank-to-bank to a depth of 350 feet. (See the following websites:

1) <http://dnr.alaska.gov/mlw/mining/largemine/chuitna/> and 2) <http://chuitnaseis.com/>)

The Chuitna project, if carried forward, will without question impose disproportionate negative impacts on the environment of the Native Village of Tyonek. It will literally destroy much of the Ch'u'itnu watershed, a key Coho Salmon spawning stream that has been and still today is traditionally used by the Tubughna people of Tyonek Village for key subsistence activities and for a range of related cultural purposes.

Some of the significance of this watershed, and the ways in which the Chuitna project would affect them if carried out, are summarized in the enclosed letter of April 3, 2015 to the USACE. The letter is framed with reference to the criteria and standards of the National Park Service and Advisory Council on Historic Preservation under the National Historic Preservation Act (NHPA), but is relevant to review under the National Environmental Policy Act (NEPA) and other authorities as well.

Since it is the Tubughna people of Tyonek whose traditional lifeways are most intimately associated with the Ch'u'itnu watershed, it is they who will suffer impacts if the project is carried out. That is vastly disproportionate to the impact that would be felt by the general population of Alaska and the Cook Inlet area. We think it obvious that this constitutes an environmental justice issue.

Sadly, we have not found the USACE responsive to the Native Village of Tyonek's concerns. Notably, the USACE has dragged its feet in addressing the eligibility of the watershed for the National Register of Historic Places, based on extensive ethnographic, historical, and archaeological documentation that the Village has provided. This is important because once the watershed is determined eligible for the Register, as we are confident it will be, the USACE will have to consult closely with the Village of Tyonek and

others to establish in detail how the proposed mine would affect the watershed and its human uses, and whether there are feasible ways to avoid, reduce, or mitigate adverse effects.

At present the project proponent is proposing, and the USACE is apparently considering, the preposterous notion that the watershed can be mined and then somehow put back together to create a new environment that salmon, other wildlife and plants, and the people who depend on them will find equivalent to existing conditions. It is imperative that the USACE consult directly with the Native Village of Tyonek in order to understand how ridiculous this proposition is, and the regulations governing compliance with Section 106 of the NHPA (36 CFR 800) provide a reasonable vehicle for effecting such consultation. The USACE, however, has thus far been unresponsive to our requests that it establish the National Register eligibility of the watershed and begin to properly assess the project's potential effects on it.

I understand that the U.S. EPA sometimes participates in project review under NEPA and NHPA to help ensure that the environmental justice aspects of proposed projects are properly considered. We hope that your office will be willing to do so in this case, and to encourage the USACE to stop dragging its feet in recognizing the significance of the Ch'u'itnu watershed and the seriousness of the proposed mine's potential effects.

I would appreciate the opportunity to discuss this matter with you. Would you please call me at 907-276-0680, or advise me when and how I can best call you?

Thank you for your attention to the concerns of the Native Village of Tyonek, and for your devotion to environmental justice.

Sincerely,



Heather Kendall-Miller

Encl: copy of April 3, 2015 letter to USACE

Cc w/encl:

Dept. of Army (Chip Smith)
ACHP (John Eddins, Charlene Dwin Vaughn)
Native Village of Tyonek (President Al Goozmer)
Judith E. Bittner, State Historic Preservation Officer
Shina Duvall, State Historic Preservation Officer
Paul Loether, Keeper, National Register of Historic Places

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April 3, 2015

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Commander, Alaska Engineer District
U.S. Army Corps of Engineers

Sheila M. Newman
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RPEDS, South/CEMVN-PDN-NC
Alaska District, U.S. Army Corps of Engineers
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Re: Statement of the potential adverse effects of the proposed Chuitna Coal Mine on the
Ch'u'itnu traditional cultural landscape ("TCL") district

Col. Lestochi & Chief Newman:

This document describes the potential adverse effects of the proposed Chuitna Coal Mine on the Ch'u'itnu traditional cultural landscape ("TCL") district.

A request that the Ch'u'itnu watershed be considered eligible for the National Register of Historic Places was submitted to the U.S. Army Corps of Engineers on April 3, 2013, accompanied by a report documenting the eligibility of the landscape.¹ The report shows that the Ch'u'itnu watershed is a traditional cultural landscape of the Tyonek Dena'ina, significant for its association with at least a thousand years of uninterrupted Tyonek Dena'ina subsistence based largely on salmon. PacRim Coal, LP has proposed a surface coal mine within the watershed which, if constructed, would damage the integrity of the TCL district by harming the salmon runs and other subsistence resources, disrupting the cultural practices dependent on those resources, and altering the historic wild character and feeling of the landscape. These constitute adverse effects to the historic Ch'u'itnu TCL district.

¹ Native American Rights Fund, The Ch'u'itnu Traditional Cultural Landscape: A District Eligible for the National Register of Historic Places (2015).

Statutes and Regulations

The National Historic Preservation Act² (“NHPA”) provides for the expansion and maintenance of a National Register of Historic Places (“National Register”), containing places “significant in American history, architecture, archaeology, engineering, and culture.”³ Its implementing regulations, along with National Park Service (“NPS”) publications, clarify how to determine if a place is eligible for inclusion in the National Register. To be eligible, a property must have significance, defined according to criteria found in 36 C.F.R. § 60.4; it must also have “integrity of location, design, setting, materials, workmanship, feeling, and association.”⁴ Integrity is defined in NPS guidance as “the ability of a property to convey its significance”;⁵ the same publication also defines the elements of integrity, and provides overall guidance on evaluating a property’s eligibility for the National Register.

NPS guidance recognizes that traditional cultural significance, which the Ch’u’itnu TCL district possesses, can be difficult to capture. National Register Bulletin 38 consolidates the question of integrity in the traditional cultural context into two questions. “First, does the property have an integral relationship to traditional cultural practices or beliefs; and second, is the condition of the property such that the relevant relationships survive?”⁶ Because traditional cultural significance is derived from the relationship between the physical features of the land and the beliefs and practices of the associated traditional group, changes to either side of that relationship could alter the traditional cultural significance and thereby diminish the property’s integrity.

The NHPA requires federal agencies to take into account the effects of their undertakings on historic properties (the “Section 106 process”).⁷ To accomplish this, agencies are directed to determine if a given undertaking will affect any properties eligible for inclusion in the National Register. If it will, the agency must consult with the State or Tribal Historic Preservation Officer, and with any Indian tribe or Native Hawaiian organization to which the property is significant, to determine whether the effects will be *adverse*, meaning it may alter any of the characteristics that give the property historical significance in a way that diminishes their integrity. If there will be no adverse effects, the agency proposes a finding of no adverse effect; if any adverse effects are found, the agency must continue consultation to resolve them. The agency must document its findings pursuant to 36 C.F.R. § 800.11.

An adverse effect is found “when an undertaking may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion in the National Register in a manner that would diminish the integrity of the property’s location, design, setting,

² Pub. L. No. 89-665; 54 U.S.C. §§ 300101 et seq.

³ 54 U.S.C. § 302101.

⁴ 36 C.F.R. § 60.4.

⁵ Patrick W. Andrus & Rebecca H. Shrimpton, National Register Bulletin 15: How to Apply the National Register Criteria for Evaluation 44 (2002), available at <http://www.nps.gov/NR/PUBLICATIONS/bulletins/nrb15/>.

⁶ Patricia L. Parker & Thomas F. King, National Register Bulletin 38: Guidelines for Evaluating and Documenting Traditional Cultural Properties (1998), available at <http://www.nps.gov/nr/publications/bulletins/pdfs/nrb38.pdf>.

⁷ 54 U.S.C. § 306108.

materials, workmanship, feeling, or association.”⁸ Adverse effects need not be a direct or immediate result of the undertaking, and “may include reasonably foreseeable effects caused by the undertaking that may occur later in time, be farther removed in distance or be cumulative.”⁹ Several examples of adverse effects are set out in the regulations, including:

- “Physical destruction of or damage to all or part of the property”;¹⁰
- “Change of the character of the property's use or of physical features within the property's setting that contribute to its historic significance “;”¹¹ and
- “Introduction of visual, atmospheric or audible elements that diminish the integrity of the property's significant historic features.”¹²

The Proposed Mine

The proposed coal mine would be located in the upper reaches of the Ch'u'itnu watershed, about 12 miles northwest of the village of Tyonek. Mining would remove an estimated 300 million tons of sub-bituminous coal, which would be crushed and transported approximately eight miles via overhead conveyor to Ladd Landing on the shore of Cook Inlet, where it would be stockpiled before being transported by a second conveyor to a constructed off-shore loading facility. There, it would be loaded onto barges or ships. The mine itself would be up to 350 feet deep, and the mine operation stage would last for a minimum of 25 years.¹³

Mining and construction of facilities and infrastructure would require filling over 2000 acres of wetlands and 11.7 miles of anadromous streams.¹⁴ In particular, Middle Creek (also known as Stream 2003), a tributary of the Ch'u'itnu, lies directly in the mine footprint. Middle Creek contains key habitat for coho (silver) salmon spawning and rearing.

The Ch'u'itnu Traditional Cultural Landscape District

The mouth of the Ch'u'itnu, also called the Chuitna River, is located just northeast of the village of Tyonek, 50 miles southwest of Anchorage across Cook Inlet. Its watershed boundary constitutes the boundary of the traditional cultural landscape, with some small alterations to include certain adjacent creeks that share its significance, but flow directly into Cook Inlet. The Ch'u'itnu is one of the major salmon spawning rivers in Cook Inlet, and is the primary Chinook, or king, salmon river on the west side of the Inlet. This is due in large part to the optimal salmon habitat that the Ch'u'itnu and its tributaries provide. Their gravel stream beds, produced by

⁸ 36 C.F.R. § 800.5(a)(1).

⁹ *Id.*

¹⁰ 36 C.F.R. § 800.5(a)(2)(i).

¹¹ 36 C.F.R. § 800.5(a)(2)(iv).

¹² 36 C.F.R. § 800.5(a)(2)(v).

¹³ PacRim Coal LP, Chuitna Coal Project: Draft—United States Army Corps of Engineers Section 404 and Section 10 Permit Application (2013).

¹⁴ *Id.* at 43, Table 1.

Pleistocene glacial events, are ideal for egg incubation and fry survival, and form part of an intact system that has sustained salmon in Cook Inlet for at least 2,200 years.¹⁵ The Ch'u'itnu, its tributaries, and the salmon themselves also support a rich variety of other flora and fauna.

Oral history and the archaeological record show that Dena'ina have continuously settled and harvested salmon and other wild resources in the Ch'u'itnu watershed since at least AD 1000. A complex system of intra- and inter-community resource sharing developed, along with a belief system in which plants and animals had souls and would allow themselves to be harvested only if treated respectfully by Dena'ina. Today, the descendants of those original sedentary Dena'ina – Tubughna, or “beach people” – still live in their original territory, in the village of Tyonek, where they practice a subsistence lifestyle. The sharing of salmon continues to define community membership, and respect for nature and subsistence resources is still considered essential. Tyonek residents today practice contemporary forms of traditional rituals, and maintain a strong sense of connection to the salmon that sustains them, the river that sustains the salmon, and the land that has been their home for a thousand years or more.

Eligibility for the National Register

The Native Village of Tyonek has shown that the Ch'u'itnu watershed be found eligible for the National Register under Criteria A, C, and D as a traditional cultural landscape district. Criterion A provides that properties are eligible if they “are associated with events that have made a significant contribution to the broad patterns of our history,”¹⁶ while Criterion C provides in part that “a significant and distinguishable entity whose components may lack individual distinction”¹⁷ may be eligible. Properties are eligible under Criterion D if they “have yielded or are likely to yield information important in history or prehistory.”¹⁸ A portion of the watershed – the Ch'u'itnu Archaeological District (“CAD”) – has already been found eligible under Criteria A and D; the overall Ch'u'itnu TCL district is significant for similar reasons to the CAD, and is the more logical unit of significance for purposes of the National Register.

The Ch'u'itnu watershed is eligible for the National Register based on its association with a thousand years or more of Tyonek Dena'ina subsistence practices and related cultural practices, which have continued into the present and if not destroyed by outside forces will continue into the future. Like the CAD, its significance arises from “the uninterrupted use, from precontact times to the present, of salmon subsistence not merely as a dietary supplement, but as an integral part of contemporary Tyonek culture.” These events “have made a significant contribution to the broad patterns of [Tyonek Dena'ina] history,” and the landscape holds this significance even if “its components...lack individual distinction.” The landscape is also very likely to contain important information contributing to our understanding of history or prehistory. Finally, the landscape conveys its significance fully, particularly to Dena'ina people. As such, it is a significant property with integrity and is eligible for inclusion in the National

¹⁵ TCL report p33

¹⁶ 36 C.F.R. § 60.4(a).

¹⁷ 36 C.F.R. § 60.4(c).

¹⁸ 36 C.F.R. § 60.4(d).

Register.¹⁹

Significant Elements and Adverse Effects

Because the proposed location of the Chuitna Coal Mine is within the Ch'u'itnu TCL, the mine will necessarily affect a historic property. The next step in the Section 106 process is for the lead agency to analyze whether those effects will be adverse, or will diminish the integrity of the property's significant features or its significance as a whole. This section describes three main categories of significant landscape features – salmon and other subsistence resources, indigenous land use patterns, and the landscape's wild character. It outlines how the proposed mine will harm the integrity of each of these types of features, constituting an adverse effect on the TCL district as a whole.

Salmon and Other Subsistence Resources

Salmon, as the basis of Dena'ina subsistence and society, may be the most significant feature of the landscape. The presence of salmon and other wild subsistence resources, and the physical characteristics of the landscape that permit their abundance, are clearly associated with Tyonek Dena'ina subsistence practices, and as such are significant characteristics of the historic landscape.

These characteristics possess integrity of location, setting, materials, feeling, and association. The locations of the river, its tributaries, and other natural features, as well as the salmon run routes and spawning areas, remain essentially unchanged since Dena'ina first settled in the area. The resources found within the watershed, including salmon, other fish and land animals, and vegetation, are integral parts of its setting, or character. Those resources were and are used in Dena'ina material culture, and are the basis for Tubughna social and spiritual culture. Their continued presence today means that they have integrity of materials. Their continued presence also means that they "reflect the historical scene," or have integrity of feeling. Finally, continued Tyonek Dena'ina salmon subsistence and identity as "salmon people" show that the landscape's wild resources have integrity of association. In the language of Bulletin 38, it is the relationship of the salmon with traditional Tubughna practices and beliefs, and the physical conditions that permit the salmon to thrive, that give the landscape integrity. It follows that impacts on that relationship or those conditions diminish integrity and are an adverse effect.

Construction of the mine and mine facilities, in particular the pit area, will physically destroy salmon habitat in the landscape district. "Physical destruction of...all or part of the property" is the first example of an adverse effect listed in the regulations.²⁰ In particular, the mine area will cover at least 11.7 miles of prime salmon habitat, as well as moose habitat and traditional use areas of Tyonek families. Although PacRim has proposed mitigations such as habitat reconstruction for the damage done, the success of their proposed techniques is far from certain.²¹ It is at the very least "reasonably foreseeable"²² that the salmon run will be diminished,

¹⁹ See Native American Rights Fund, *supra* note 1, for a full discussion of eligibility

²⁰ 36 C.F.R. § 800.5(a)(2)(i).

²¹ See Ridolfi Environmental, Review Comments on Chuitna Coal Project Documents 3-5 (2014).

impairing the integrity of location and materials of the salmon themselves as well as the integrity of setting, feeling, and association of the landscape to which they contribute.

Impacts on salmon logically impact the Tyonek Dena'ina relationship with the salmon. With less salmon, there is not only less to eat, but less to share as well, an activity that defines the Tyonek community and is specifically mentioned in the Determination of Eligibility for the CAD.²³ As Tyonek Elder Pat Chuitt Jr. put it, without salmon and without sharing salmon, Tyonek “goes away.”²⁴ Other traditional practices that make up the Tyonek Dena'ina relationship with their traditional cultural landscape are also rooted in the yearly subsistence cycle. These include fish camps and their associated “multigenerational meaningful work” and cultural transmission²⁵, and rituals such as the First Salmon Ceremony and Great Blessing of the Water that are intended to ensure the salmon's return.²⁶ “It is the [associated] beliefs and practices that may give the [traditional cultural] property its significance,”²⁷ and the continued health of the salmon run is essential to these practices. If the salmon or the viability of their spawning runs are harmed, the people and their relationship with the salmon will be harmed as well, and the integrity of the traditional cultural landscape will be diminished.

Tubughna Land-Based Cultural Practices

The subsistence-based culture of the Tyonek Dena'ina, both historic and ongoing, is rooted in the landscape and its resources. The resulting traditional cultural land use patterns are themselves significant characteristics of the landscape for purposes of the National Register. These patterns are reflected in the archaeological evidence of traditional houses and underground cold storage pits, as well as present-day fish camps and family subsistence use areas. Spiritually significant land characteristics include the locations of burials and cremations, and the locations of rituals such as the First Salmon Ceremony, the Great Blessing of the Water, and the taking of a young person's first moose.

These sites and practices, and the landscape that contains them, retain integrity of location; they exhibit the ongoing relationship between culture and landscape that constitutes integrity of design; and they are what give the landscape its setting or character in the eyes of the Tubughna people. They possess integrity of workmanship, in that they are physical evidence of traditional subsistence crafts. These elements of integrity come together to give these practices, and the landscape on which they play out, integrity of feeling and association. Finally, the historic and ongoing relationship that the people of Tyonek have with the landscape is manifested in these cultural practices; in Bulletin 38's terms, the condition of the landscape is such that the traditional practices and beliefs relating to the landscape survive.

²² 36 C.F.R. § 800.5(a)(1).

²³ National Park Service, Determination of Eligibility Notification: Ch'u'itnu Archaeological District (2014).

²⁴ Interview by Alan Boraas and Ronald Stanek with Pat Chuitt Jr. and Katherine Chickalusion, Tyonek Elders, in Tyonek, Alaska (Mar. 12, 2013).

²⁵ See Native American Rights Fund, *supra* note 1, 90-91.

²⁶ *Id.* at 109-12.

²⁷ Bulletin 38 at 11.

The mine and the associated construction will “change...the character of the property’s use.”²⁸ Most obviously, it will put an end to Dena’ina subsistence land use in and around the mine footprint. The landscape’s significance is derived in part from the centuries of uninterrupted subsistence use, so replacing that use pattern with mining activities will damage the integrity of the landscape. Harm to salmon and other subsistence resources such as moose will also have an indirect impact on land use well outside of the mine footprint. Less subsistence resources means less subsistence land use, which includes fishing and hunting as well as the social and spiritual practices discussed above.

The project may also destroy significant features such as archaeological sites, burial sites, ritual locations, and the homes of spirit people. The ACHP notes: “Alteration or destruction of an archaeological site is an adverse effect, whether or not recovery of archaeological data from the site is proposed.”²⁹ Mitigation of the harm to the landscape’s integrity from such destruction may be possible, but can be addressed only after the adverse effect has been recognized, in consultation with the Native Village of Tyonek.

The destruction that necessarily accompanies mining goes against the respect and caretaking obligations to nature and wildlife that many Tubughna consider essential to their relationship with their land and traditions.³⁰ Elder Katherine Chickalusion stated: “I always think we were put here for a reason because God, the great spirit, knew we was going to respect this land, that we were going to care for it, and we were going to take care of it.”³¹ Al Goozmer, President of the Native Village of Tyonek, described the mine like so: “They’re going to dig a 350-foot hole in a living being and it’s going to destroy it, completely destroy it.”³² Bulletin 38 instructs us to assess integrity from the perspective of the associated group; the perspectives expressed above indicate that mining within the Ch’u’itnu watershed would be a serious breach of Tubughna obligations to the landscape. As a result, their relationship with the landscape would be compromised, impacting the traditional cultural significance of the landscape and diminishing its integrity.

The Natural Setting

The undeveloped, wild setting of the Ch’u’itnu watershed is another significant characteristic. The first sedentary Dena’ina would likely still recognize today’s landscape as their own, one thousand years later. Today’s Tyonek residents associate this natural landscape with contemporary Tyonek culture as well as with their history. John Standifer told interviewers: “[I]t’s such a great feeling to be out in the wilderness...I use my camp on the beach all the time.

²⁸ 36 C.F.R. § 800.5(a)(2)(iv)

²⁹ Advisory Council on Historic Preservation, Section 106 Regulations: Flow Chart Explanatory Material (Feb. 12, 2001), <http://www.achp.gov/flowexplain.html>.

³⁰ See Native American Rights Fund, *supra* note 1, 94-95.

³¹ Interview with Pat Chuit Jr. and Katherine Chickalusion, *supra* note 23.

³² Interview by Alan Boraas and Ronald Stanek with Al Goozmer, President of the Native Village of Tyonek, in Tyonek, Alaska (Mar. 12, 2013).

I say I got to go talk to my Elders and I got to go solve this problem I have.”³³ The “great feeling” he describes shows that the wild elements of the landscape have integrity of setting, feeling, and association. The condition of the land is such that Mr. Standifer’s and others’ relationship with it as the land of their ancestors remains intact. The geographic and ecological characteristics of this natural landscape have changed only minimally during the period of significance, and therefore also have integrity of location and of materials.

The proposed mine would alter that character by “chang[ing] physical features within the property’s setting that contribute to its historic significance,”³⁴ and by “introduc[ing] visual, atmospheric or audible elements that diminish the integrity of the property’s significant historic features.”³⁵ The mine and its facilities, camp housing, and infrastructure would add non-natural elements to a landscape significant in part for its wild character. The visual, auditory, and olfactory effects of the mine construction would reach beyond the actual location of mine elements. In particular, the overhead conveyor, stretching eight miles across the landscape from the mine to the shore, would be visible from a wide swath of land, and its operation would be widely audible. This would alter the setting of the landscape by changing its wild character; diminish integrity of feeling by changing the landscape so that it no longer reflects the historic scene; and diminish integrity of association by changing the landscape’s relationship with historic events, such as continuous subsistence use.

Conclusion

The proposed Chuitna Coal Mine will, if constructed, have an adverse effect on significant elements of the Ch’u’itnu TCL. It will physically destroy part of the landscape district, directly harming the integrity of the destroyed area and indirectly harming the integrity of salmon and other subsistence resources. The impact on salmon will affect the traditional cultural practices and beliefs that give the landscape its significance. The development of the mine and its facilities and infrastructure will erase the wild character of parts of the landscape. Taken as a whole, the landscape’s ability to convey its significance – that is, its association with the uninterrupted history of Dena’ina subsistence use, and its ability to yield information about that history – will be harmed irreparably by the proposed mine project. As such, the project will have an adverse effect on the Ch’u’itnu TCL, and a finding of adverse effect should be issued.

³³ Interview by Alan Boraas and Ronald Stanek with John Standifer, Tyonek Elder, in Tyonek, Alaska (Mar. 12, 2013).

³⁴ 36 C.F.R. § 800.5(a)(2)(iv).

³⁵ 36 C.F.R. § 800.5(a)(2)(v).

If there is anything further that you require, please do not hesitate to contact me at (907) 257-0505.

Yours sincerely,

A handwritten signature in cursive script, reading "Heather Kendall Miller".

Heather Kendall Miller
Native American Rights Fund

cc: Al Goozmer, President, Native Village of Tyonek
Paul Loether, Keeper, National Parks System
Judith E. Bittner, State Historic Preservation Officer
Shina DuVall, State Historic Preservation Officer
Charlene Vaughn, Advisory Council on Historic Preservation
Valeria Hauser, Advisory Council on Historic Preservation
John Eddins, Advisory Council on Historic Preservation
Reid Nelson, Advisory Council on Historic Preservation
Richard Stern, Northern Land Use Research Inc.
Valerie Randall, AECOM

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April 3, 2015

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Commander, Alaska Engineer District
U.S. Army Corps of Engineers

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Chief, Special Actions
RPEDS, South/CEMVN-PDN-NC
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JBER, AK 99516-0898

Re: Native Village of Tyonek and the Ch'u'itna Coal Project

Col. Lestochi & Chief Newman:

On behalf of the Native Village of Tyonek (NVT), I am writing to notify you of on-going work that the Tribe has been engaged in that is relevant to the Corp's responsibilities under Section 106 of the National Historic Preservation Act and under the National Environmental Policy Act regarding the Ch'u'itna Coal Project.

As you know, prior to the suspension of the monthly meetings among the co-operating agencies, the NVT was an active participant in the Section 106 consultation discussions among the co-operating agencies. The Tribe also engaged in government-to-government consultation with the Alaska State Historic Preservation Office (SHPO), the Keeper of the National Register of Historic Places (NRHP), and the Advisory Council on Historic Preservation (ACHP) to request a determination of eligibility for the NRHP for the Ch'u'itnu Archaeological District (CAD), TYO-132, under Criterion A (36 C.F.R. § 60.4(a)), for its association with "the broad patterns of history" regarding a continuous and uninterrupted subsistence pattern of use from pre-contact times to today. Upon the Corp's request for a determination of eligibility, the SHPO and the Keeper concurred that the District was eligible under Criterion A. In its transmittal letter, the Keeper also suggested that the CAD may be eligible as part of a larger landscape.

Further consideration and consultation with the Keeper's staff, the SHPO staff, and staff of the ACHP has convinced the Native Village of Tyonek that the "larger landscape" alluded to by the Keeper is the appropriate entity to regard as eligible for the NRHP. Based on relevant NRHP

literature and consultation with experts, the NVT believes that the Ch'u'itnu drainage is eligible for the NRHP as a cultural landscape, comprising a district that can best be understood as a traditional cultural place or property (see Parker and King 1998). As such, and as discussed by the attached report, it is eligible for the NRHP under NRHP Criterion A. The same considerations support its eligibility under Criterion C (36 C.F.R. § 60.4(c)), as "a significant and distinguishable entity whose components may lack individual distinction."

Accordingly, the NVT formally requests that based upon the information provided, you consider the landscape eligible for the Register pursuant to 36 C.F.R. Part 800.4(c)(2). In the event that the Corps should choose to seek guidance from the SHPO, the ACHP, or the Keeper, NVT has sent copies of the enclosed materials to those agencies as well.

In addition to NVT's technical paper in support of a determination that the Ch'u'itnu drainage constitutes a traditional cultural place or property, we have also provided you with a statement of how the mine project's effects will diminish the integrity of the drainage.

If there is anything further that you require, please do not hesitate to contact me at (907) 257-0505.

Yours sincerely,



Heather Kendall Miller
Native American Rights Fund

cc: Al Goozmer, President, Native Village of Tyonek
Paul Loether, Keeper, National Parks System
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Valeria Hauser, Advisory Council on Historic Preservation
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